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TO SECSTATE WASHDC PRIORITY 1411  
INFO AMEMBASSY JAKARTA  
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AMEMBASSY SINGAPORE  
AMEMBASSY TOKYO  
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AMCONSUL SYDNEY  
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THE WHITE HOUSE WASHINGTON DC

C O N F I D E N T I A L CANBERRA 000404

NOFORN

DEPARTMENT FOR EAP, EAP/ANP, EAP/MTS, OES, OES/OA, L/OES  
PACOM FOR PEDROZO  
OSD POLICY FOR JESSICA POWERS  
SECNAV FOR NEHER

E.O. 12958: DECL: 04/23/2019

TAGS: [EWWT](#) [PHSA](#) [PREL](#) [AS](#)

SUBJECT: TORRES STRAIT: AUSTRALIANS AGREE TO MODIFY MARINE  
NOTICE

REF: A. KAGAN 4/22 EMAIL

[1](#)B. FRELICK EMAIL

[1](#)C. CANBERRA 356 AND PREVIOUS

Classified By: Economic Counselor Edgard Kagan for reasons 1.4 (b/d).

[1](#)1. (C/NF) Though surprised at U.S. expressions of concern about the text of the Marine Notice updating Australia's Torres Strait pilotage regime issued on April 17, Australia agrees to remove both the opening clause and the closing sentence saying that details about applicable legislation, application, pilot boarding places, navigation and pilotage providers are provided in the Marine Notice 8 of 2006. Damien White, Director of the Sea Law Section of DFAT told Econcouns that the Australians had been somewhat surprised by the U.S. concerns expressed to DFAT Legal Advisor Penny Richards about the Marine Notice, as the Australian view had been that the first clause ("Shipowners and operators are also reminded that,") did not contain anything that could possibly be objectionable ("we all thought it was boiler plate language") and that the additional sentence "Details regarding applicable legislation, application, pilot boarding places, navigation and pilotage providers are provided in Marine Notice 8 of 2006" was simply administrative details. However, despite their surprise at U.S. concerns, White said the Australians are eager to address those concerns in the spirit of the exchange of letters that resolved the Torres Strait issue as well as the spirit of the overall bilateral relationship. Therefore, they agree to remove both the opening clause and the closing sentence. AMSA will not issue a new marine notice, but will update the text of the Marine Notice on its website. This will be the official text of the Marine Notice, according to White. The decision was made at an interagency meeting the morning of April 22 and the change to the website will take effect by the beginning of next week. (Comment: In fact, the update was on the website on April 23. End Comment.)

[1](#)2. (C/NF) White stressed that this change is designed to assuage U.S. concerns that "Australia is trying to play a trick" on the United States, saying that Australia would never have embarked on the process of trying to work out a compromise with the United States if the intent had not been to reach a genuine compromise that Australia plans to live up to. He said that DFAT representatives have stressed to their colleagues their confidence that the United States will live

up to its commitments, as well. White argued that Australia had embarked on the "painful" process of trying to accommodate U.S. concerns about the Torres Strait pilotage regime out of a desire to remove a bilateral irritant. The cost to Australia of changing a system that they regard as working is that it might strengthen possible legal action by Singapore if it appears Australia is backing away from its original position, he said. Australia made the decision to bear this cost out of a commitment to the relationship with the United States -- Australia fully understands that "playing a trick" on the United States by would be counterproductive, White stressed. "We would be better off leaving things the way they were," he said, arguing that the continuing U.S. suspicion raises concerns within the Australian interagency process that the United States may be seeking a pretext to back away from the agreement embodied in the exchange of letters.

13. (C/NF) Econcouns thanked White for the very prompt Australian response to our concerns and promised to report this to Washington. Econcouns stressed that there should be no doubt that the United States will live up to our commitments, just as we fully expect Australia to do the same.

14. (C/NF) White added that Australia would like to arrange a conference call between DFAT, AMSA and Attorney General,s Department reps and their U.S. counterparts prior to the Maritime Safety Committee meeting in May to coordinate positions and work on choreography as agreed in previous discussions. He then handed over a copy (text below) of an April 16 letter from Singaporean Ambassador-at-Large Tommy Koh's letter in response to the Australian letter of April 1 (ref c). He asked that the United States not let Singapore know that Australia handed over a copy of the letter, saying "they will expect us to brief you, but the last thing we want is for Tommy to get offended because we are sharing his correspondence." White said that the Australian view is that the letter is more positive than they had expected, while not being as positive as they might have wished. The Australians believe that the tone is more positive than some of Koh's other communications. In particular, White noted the acceptance of the Australian suggestion for trilateral consultations on the Straits of Malacca. He pointed to the first line in para 4 of the letter stating: "Singapore will therefore reserve its position on the legality of Australia,s system of compulsory pilotage in the Torres Strait at the IMO." White said the Australian analysis is that the reference to the IMO is a significant backing away from the threat of legal action. The signal that Singapore plans to raise its objections in the IMO but not other fora marks the first time Koh has not mentioned legal action or discussion at other fora (such as the UNGA), according to White. He hastened to say that Australia is not certain about this and plans to send a positive response to Koh.

15. (C/NF) Begin text of letter:

16 April 2009

Mr. Adam McCarthy  
Assistant Secretary  
International Legal Branch  
Department of Foreign Affairs and Trade  
Australia

Dear Adam:

Thank you for your letter ref. 08/503760 dated 1 April 2009 on Singapore,s proposed amendments to the Marine Notice text agreed between Australian and the United States.

As you would recall, Singapore had proposed the insertion of two clauses into the text as follows:

"Pursuant to the International Maritime Organization Resolution MEPC.133(53) (begin underlined text) which designated the Torres Strait as an extension of the Great Barrier Reef Particularly Sensitive Area, (end underlined text) if a vessel passes through the Torres Strait (begin underlined text) on its way to an Australian port (end underlined text) and it does not comply with Australia,s system of pilotage for merchant ships 70m in length and over or oil tankers, chemical tankers and gas carriers, irrespective of size, the Government of Australia will notify the vessel,s Flag State, Owner, Operator and Master that the vessel failed to take a pilot and henceforth cannot enter an Australian port without the risk of the Owner, Operator and/or Master of the vessel being subject to a non-custodial penalty under Australian law."

While we are pleased that Australia and the US have agreed to our proposed amendment clarifying that the IMO Qagreed to our proposed amendment clarifying that the IMO Resolution MEPC.133(53) "designates the Torres Strait as an extension of the Great Barrier Reef Particularly Sensitive Sea Area", we regret to note that Australia is unable to accept our second proposed amendment inserting the clause "on its way to an Australian port."

As my delegation had stated at our meeting in Singapore on 4 March 2009, Singapore,s position is that there is no clear international legal basis for Australia to impose penalties on vessels that had transited the Torres Strait without taking on a pilot, upon their subsequent entry into an Australian port. It is the sovereign right of a state to impose conditions for entry into its ports. However, this right is not unfettered, as it must be exercised in accordance with that state,s obligations under international law.

Singapore will therefore reserve its position on the legality of Australia,s system of compulsory pilotage in the Torres Strait at the IMO. However, despite its reservations on the latest amended Marine Notice, we are prepared to move forward in a spirit of compromise. We welcome Australia,s willingness to work together on the Straits of Malacca and Singapore and other relevant straits as well as Australia,s offer of assistance regarding the Co-operative Mechanism on Safety of Navigation and Environmental Protection in the Straits of Malacca and Singapore. In that regard, we would like to propose a trilateral meeting with Australia and the United States to discuss the way forward.

Please accept my best wishes for your appointment as Australia,s Deputy High Commissioner to the United Kingdom.

Yours sincerely

Professor Tommy Koh  
Ambassador-at-Large

End Text of letter.

Clune